

MEMO ENDORSED

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ADELPHIA RECOVERY TRUST,

Plaintiff,

- against -

BANK OF AMERICA, N.A., *et al.*,

Defendants.

No. 05 Civ. 9050 (LMM)

USDC SDNY
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MOTION BY ADELPHIA RECOVERY TRUST TO AMEND THE CAPTION

The Adelphia Recovery Trust, by and through its undersigned counsel, hereby moves to amend the caption in this action to "ADELPHIA RECOVERY TRUST, plaintiff, – against – GOLDMAN SACHS & CO., defendant." In support thereof, the Adelphia Recovery Trust respectfully represent as follows:

FACTS

1. On or about July 6, 2003, the Debtor filed the complaint (as amended, the "Complaint") in this action against a multitude of defendants in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"). The Complaint included claim 31 against, among others, defendant Goldman Sachs & Co. ("Goldman").

*Motion denied. The
Court sees no need
to amend the
caption. So ordered.*
[Signature]
4/5/11

2. On or about February 9, 2006, this Court withdrew the reference to the Bankruptcy Court and transferred this action to this Court.

3. By order entered on March 5, 2007 (the "Venue Order"), venue for claims 17-24 and 56-57 was changed to the United States District Court for the Western District of New York (the "Western District").

4. On September 21, 2007, this Court entered the "Proposed Administrative Order Consolidating Docket Numbers 05 CIV 9050, 05 CIV 9250 and 05 CIV 9285 and Amending Caption" (Docket No. 95) (the "Prior Amended Caption Order").

5. On November 18, 2010, the Court granted the Adelpia Recovery Trust's Motion With Respect To Settlement Agreement With The Bank Defendants And Dismissal Of Claims and approved a settlement (the "Settlement") that had been reached between the Trust and all remaining Bank Defendants for all claims other than Goldman.¹ On December 6, 2010, the Settlement was funded and became effective. Goldman is now the only remaining defendant in the instant litigation.

6. On or about December 8, 2010, the Adelpia Recovery Trust requested that Goldman enter into a stipulation to modify the caption. On December 9, 2010, Goldman refused.

BASIS FOR RELIEF

7. Pursuant to Federal Rule of Civil Procedure 10, the caption on pleadings must name the "first party" to the action. Given that the Settlement is now effective, the venue for the Sabres' Claims has been changed to the Western District, and the claims against all other defendants have either been settled or dismissed by final order, the only remaining defendant is

¹ At the hearing on November 18, 2010, the Trust advised the Court it had reached an agreement in principle to settle its claims against the non-agent lender defendants on terms similar to those set forth in the settlement with the Bank Defendants. The parties have since entered into a written agreement, which is being filed with the Court.

Goldman. Accordingly, the caption should be modified to “ADELPHIA RECOVERY TRUST, plaintiff, – against – GOLDMAN SACHS & CO., defendant.”

8. There is precedent for this change. In this action, the Court previously amended the caption to reflect changes in the plaintiff, finding that there was “no inherent administrative reason for this adversary proceeding . . . to bear a caption that does not reflect the identity of the new plaintiff.” Similarly, this Court should amend the caption to reflect the fact that Goldman is the only remaining defendant.

9. Additionally, administrative convenience favors making this change. Currently, the full caption is over 16 pages long and includes approximately 670 defendants, of whom all, except Goldman, are either no longer defendants or are now defendants in the Western District. Even in the short caption used for motion papers, the lead defendant is “Bank of America, N.A.,” which is no longer a party. There is no reference in the short caption to Goldman.

10. Furthermore, Goldman would not be prejudiced by the change in the caption, which would have no impact on its rights and defenses. *See, e.g., Chiquita Int’l, Ltd. v. M/V Cloudy Bay*, 2009 U.S. Dist. LEXIS 91790, *7-8 (S.D.N.Y. Sept. 30, 2009) (granting motion to amend caption “will not prejudice the defendants unduly.”) *See also Mountain Cable Co. v. Public Serv. Bd. of the State of Vt.*, 242 F.Supp. 2d 400, 403 (D. Vt. 2003) (motion to amend caption did not prejudice defendants because it did not alter plaintiff’s “substantive allegations nor [its] theory of liability” and “serve[d] only to change the names of the defendants and not where ultimate liability may lie.”) Similarly, the proposed amendment to the caption of this case does not change any substantive allegations or any theory of liability, nor does it negatively impact in any way Goldman’s rights and defenses.

11. For all of the foregoing reasons, in the interests of justice and administrative convenience, this Court should amend the caption to properly reflect Goldman's status as the only remaining defendant.

WHEREFORE, the Adelpia Recovery Trust respectfully requests that this Court enter an order modifying the caption to read "ADELPHIA RECOVERY TRUST, plaintiff, – against – GOLDMAN SACHS & CO., defendant," and grant the Adelpia Recovery Trust such other and further relief as is just and proper.

Dated: December 22, 2010
New York, New York

KASOWITZ, BENSON, TORRES
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